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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 558

EDWARD VANCE,
Petitioner,

vs.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INCORPORATED (BMI); SHAPIRO, BERNSTEIN & COMPANY, INCORPORATED; EDWIN H. MORRIS & COMPANY, INCORPORATED; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INCORPORATED; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INCORPORATED; CHANCELLOR RECORDS, INCORPORATED; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; KATZ DRUG COMPANY; DICK HOWARD; BOB ELLSWORTH; RUSS MORGAN; CURT MASSEY; ARBIE GIBSON; JIMMIE HODGES,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

EDWARD VANCE,
North River & Kentucky,
IN. 1-5415,
Independence, Missouri,
Petitioner.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3039

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List of Cases Which Involve All Related Subjects of This Cause

Advertising Exchange v. *Bayless Drug Store*, D.C. N.Y. 1942, 3 F.R.D. 178 (R. p. 70).

Berry v. *Hoffman*, 1937, 189 Atl. 516, 125 Pa. Super. 261 (R. p. 72).

Caruthers v. *R.K.O. Radio Pictures*, D.C. N.Y. 1937, 20 Fed. 418.

Chamberlain v. *Feldman*, 1949, 89 N.E.2d 863, 300 N.Y. 135 (R. p. 72).

Clayton v. *Stone*, C.C. N.Y. 1829, Fed. Cas. No. 2, 872.

Greenbie v. *Noble*, D.C. N.Y. 1957, 151 F. Supp. 45.

Hartley Pen Co. v. *Lindy Pen Co.*, D.C. Cal. 1954, 16 F.R.D.

Lampert v. *Hollis Music, Inc.*, Sup. 1951, 109 N.Y.S.2d 319 (R. p. 71).

Lowe's, Inc., v. *Columbia Broadcasting System*, D.C. Cal. 1955, 131 F. Supp. 165, affirmed 239 F.2d 532,

Certiorari granted 77 S. Ct. 824, 353 U.S. 946, 1 L. Ed. 856.

Mazer v. *Stein*, Md. 1954, 74 S. Ct. 460, 347 U.S. 201, 98 L. Ed. 630, rehearing denied 74 S. Ct. 637, 347 U.S. 949, 98 L. Ed. 1096.

Mills Music Corp. v. *Cromwell Music*, D.C. N.Y. 1954, 126 F. Supp. 54.

Northern Music Corp. v. *King Records Distributing Co.*, D.C. N.Y. 1952, 107 F. Supp., 105 F. Supp. 393.

Photo-Drama Motion Picture Co. v. *Social Uplift Film Corporation*, N.Y. 1915, 220 Fed. 448 (R. p. 70).

Press Pub. Co. v. *Monroe*, N.Y. 1896, 73 Fed. 196, 19 C.C.A. 429, error dismissed 17 S. Ct. 40, 164 U.S. 105, 41 L. Ed. 367.

R. C. A. Mfg. Co. v. *Whiteman*, C.C.A. N.Y. 1940, 114 F.2d 86. Certiorari denied 61 S. Ct. 393, 311 U.S. 712, 85 L. Ed. 463 (R. p. 71).

Robbins Music Corp. v. *Wienstock*, D.C. N.Y. 1952, 107 F. Supp. 102.

U. S. v. *American Bell Telephone Co.*, Mass. 1895, 16 S. Ct. 69, 159 U.S. 548, 40 L. Ed. 255 (R. p. 71).

Westway Theatre v. *Twentieth Century-Fox Film, Corporation*, D.C. M.D. 1940, 30 F. Supp. 830, affirmed 113 F.2d 932.

Textbooks

35 C.J.S., Sec. 4, Page 779.

Common Law copyright, 18 C.J.S., Sec. 2, Pages 138-139 (R. p. 69).

Copyright is purely statutory right, 18 C.J.S., Sec. 18, Page 161 (R. p. 18).

Duration, 18 C.J.S., Sec. 6, Page 140 (R. p. 69).

Equity Rules, 18 C.J.S., Sec. 144, Page 254 (R. p. 78).

In General, 18 C.J.S., Sec. 4, Page 139 (R. p. 68).

Literary property, 18 C.J.S., Sec. 3, Page 139 (R. p. 68).

Nature and form of action, 18 C.J.S., Sec. 145, Page 254 (R. p. 78).

Pages 245-246 as explained in *Lederer v. Rankin*, C.C. Ohio, 90 Fed. 449.

Publication without consent, 18 C.J.S. Sec. 13 (3), Page 157 (R. p. 69).

Purpose of the Statute, 18 C.J.S., Sec. 132, Notes 12, 13, 14, 15, 16.

Special Statutory Provisions, 18 C.J.S., Sec. 147, Page 255 (R. p. 71).

Statutory Damages, 18 C.J.S., Sec. 135 (c), Page 249 (R. p. 78).

Statutes

5th Amendment and Sec. 1 of 14th Amendment.

Article 1, Sec. 8, Clause 8, of the Constitution of the United States.

17 U.S.C.A., Sections 1, 2, 3, 101, 105, 112, 114, 115, 209, 210.

28 U.S.C.A., Sec. 1253, Page 26, June 25, 1948, c. 646, 62 Stat. 926.

28 U.S.C.A., Sec. 1254 (1), Page 42, June 25, 1948, c. 646, 62 Stat. 928.

28 U.S.C.A., Sec. 1291, Page 230, June 25, 1948, c. 646, 62 Stat. 929.

28 U.S.C.A., Sec. 1338 (a), Page 65, June 25, 1948, c. 646, 62 Stat. 931.

28 U.S.C.A., Sec. 1400 (a), Page 382, June 25, 1948, c. 646, 62 Stat. 936.

28 U.S.C.A., Sec. 2106, Page 82, June 25, 1948, c. 646, 62 Stat. 963.

28 U.S.C.A., Sec. 2403, Page 174, June 25, 1948, c. 646, 62 Stat. 971.

37 C.F.R., Sec. 201.2 (d) (2) (3), Pages 326-327, U.S.C.A., Title 17.

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OCTOBER TERM, 1959.

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AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP); BROADCAST MUSIC, INCORPORATED (BMI); SHAPIRO, BERNSTEIN & COMPANY, INCORPORATED; EDWIN H. MORRIS & COMPANY, INCORPORATED; DUCHESS MUSIC CORPORATION; MAIN STREET SONGS, INCORPORATED; JENKINS MUSIC COMPANY; DECCA DISTRIBUTING CORPORATION; DECCA RECORDS, INCORPORATED; CHANCELLOR RECORDS, INCORPORATED; KMBC RADIO AND TELEVISION BROADCASTING STATION; WHB RADIO BROADCASTING STATION; KATZ DRUG COMPANY; DICK HOWARD; BOB ELLSWORTH; RUSS MORGAN; CURT MASSEY; ARBIE GIBSON; JIMMIE HODGES,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To The Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Edward Vance, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this cause.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Eighth Circuit is reproduced as Appendix A hereto.

The judgment of the United States Court of Appeals for the Eighth Circuit is reproduced as Appendix B hereto.

The Court Order of the District Court R. pp. 58-59 and pp. 3-4-5 of Court of Appeals opinion Appendix A.

JURISDICTION.

The judgment of the United States Court of Appeals was entered October 26, 1959, affirming the Court Order of the District Court entered May 6, 1959. The opinion of the Court of Appeals was entered October 26, 1959. An order issued upon notice of appeal was entered November 4, 1959, staying the mandate until December 4, 1959, for the purpose of petitioner to print and file this petition.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section 1254 (1). This claim is not dependent upon diversity of citizenship or the amount in controversy although there is more than ten thousand dollars over and above cost and interest in controversy. This claim arises under Federal questions strictly concerning copyrights which are title, validity, illegal procurement of four coyprights, infringement, enforcement of four copyrights, continuous illegal use of four copyrights with false markings on them and false markings on four songs, the demand of statutory damages and permanent injunction.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section

1253, because Section 3, Title 17, U.S.C.A., is repugnant to the Constitution of the United States rendering Section 2 null, rendering petitioner's common law literary property right inadequate. See Certificate of Unconstitutionality Exhibit 89, signed by Judge Knox.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section 2106. There are questions of Federal law that the District Court and the Court of Appeals should have determined, that this Court should determine or supervise the determination. Title to and validity of four copyrights and a Constitutional question.

Jurisdiction of this Court is invoked under the provisions of Title 28, United States Code Annotated, Section 2403. The United States or any agency, officer or employee thereof is not a party. The United States should be enjoined and restrained from enforcing Section 3, Title 17, U.S.C.A. The District Court Order affirmed by the Court of Appeals challenges and affects the validity of Sections 1, 2, 101, 105 and 112 of Title 17, U.S.C.A.

Jurisdiction of this Court is invoked under the provisions of Title 17, U.S.C.A., Section 114, entitled Review of Orders, Judgments or Decrees Act, July 30, 1947, c. 391, Section 1, 61 Stat. 652; Oct. 31, 1951, c. 655, Sec. 17, 65 Stat. 717.

QUESTIONS PRESENTED.

1. This claim presents substantial Federal questions of the modern Federal Law, an Act July 30, 1947, c. 391, 61 Stat. 652, Codified and enacted into positive law, Title 17 of the United States Code entitled "COPYRIGHTS."

2. Whether Congress by its Act Title 17, U.S.C.A., Sec. 1, pursuant to Article I, Sec. 8 and Clause 8, of the Constitution of the United States, has secured for authors an exclusive property right protecting an author's intangible and incorporeal rights against any unauthorized use or interference.

3. Whether The Library of Congress Copyright Office grants a copyright or merely makes a registration of copyright without any comparison, research or legal advice as to the merits of copyrights. 37 C.F.R., Sec. 201.2(d), (2), (3), U.S.C.A., Title 17, pp. 326-327.

4. Section 1 of Title 17, U.S.C.A., reads in part as follows—

Sec. 1. EXCLUSIVE RIGHTS AS TO COPYRIGHTED WORKS.

Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right: (a) To print, reprint, publish, copy, and vend the copyrighted work; including all the other privileges exclusively numerated through (a) (b) (c) (d) to (e) paragraph of Sec. 1.

5. No time limit whatever is imposed upon the right of the person entitled to copyright to claim the same.

No person who does not comply with the provisions of Title 17, U.S.C., Sec. 1, and who is not entitled to copyright registration can do the things enumerated in paragraphs (a) to (e) in Sec. 1, no rights are secured at the time of registration or at the present time or in the future because the Statute means just what it says. Only the person entitled to copyright can do or continue to do what a valid copyright provides for.

6. It is the contention of your petitioner that the statutes of limitation do not apply to illegal procurement

or the wrongful registration of copyrights being continuously used each and every day with false markings on four copyrights and false markings on four songs registered for 28 years with the privilege to renew for 28 years more. That the continuous use in this instant cause is direct violation of Sections 1, 2, 3, 105 and 112, Title 17, U.S.C.A. See description of the invalid copyrights in Appendix C.

7. Whether an author's exclusive intangible and incorporeal rights inherent both in common law literary property right and statutory copyright are of indefinite or perpetual duration, continuing in the owner until abandoned or lost by a general publication. That publication without petitioner's consent in no way affects his common law right.

8. Whether the Statute, Section 1338 (a), U.S.C.A., invokes the United States District Court's original and exclusive jurisdiction over the subject matter of title to four copyrights, validity of four copyrights, illegal procurement of four copyrights, enforcement of four copyrights; illegal use of four illegal and invalid copyrights with false markings on the four copyrights and four songs, granting injunctions, service and enforcement operative pursuant to Sec. 112, Title 17, U.S.C.A.

9. Whether the statute, Title 28, U.S.C.A., Section 1400 (a), invokes the United States District Court's jurisdiction as a special venue statute over the person of defendants anywhere in the United States where defendants are licensed to do business and where defendants or their agents are doing business.

10. Whether Section 112 of Title 17, U.S.C.A., means just what it says about the court or judge having power to hold defendants in contempt before any United States

District Court anywhere in the United States granting injunctions, service and enforcement.

11. Whether Section 3, Title 17, U.S.C.A., is unconstitutional because of its construction being repugnant to the Constitution of the United States, enlarging the scope of copyrights in violation of Section 3, where the purported copyright owners, authors and publishers use rearrangement applications with entirely new songs that they acknowledged receipt of from Edward Vance the original composer, author and owner making false claims of protection on component parts in violation of 17, U.S.C and 37 Code Federal Regulation which forbids the use of a rearrangement application with entirely new material. See the description of invalid copyrights, Appendix C.

12. Whether Rule 81 (a) (1) of Federal Rules of Civil Procedure exempts Title 17, U.S.C.A., so that a copyright claim filed under Sections 1, 2, 3, 101, 105 and 112, can not be dismissed under Rule 12 (b) (1) and Rule 12 (b) (6) of Federal Rules of Civil Procedure without the Court going into the copyright records to determine the merits of copyrights and the jurisdiction of the court.

STATUTES AND REGULATIONS INVOLVED.

Statutes and Regulations are set out in Appendix D. Title 28, U.S.C.A., Sec. 1338 (a), p. 65; invokes the District Court's original and exclusive jurisdiction over the subject matter of copyrights. June 25, 1948, c. 646, 62 Stat. 931.

Title 28, U.S.C.A., Sec. 1400 (a), p. 382, invokes the District Court's Jurisdiction over the person of defendants as a special venue statute. June 25, 1948, c. 646, 62 Stat. 936.

Act July 30, 1947, c. 391, 61 Stat. 652, codified and enacted into Positive Law, Title 17 of the United States Code entitled "COPYRIGHTS" and repealed enumerated Sections or parts thereof of the Revised Statutes and Statutes at Large covering provisions codified in such Title A saving clause provided that "Any rights or liability now existing under such repealed Sections or parts thereof shall not be affected by such repeal." U.S.C.A., Title 17, Vol. 1, p. 5.

Title 17, U.S.C.A., Sections 1, 2, 3, 101, 104, 105, and 112, 114, 115, 209, 210. 37 Code Federal Regulations, Sections 201.2, (d) (2) (3), U.S.C.A., Title 17, pp. 326-327.

STATEMENT OF CASE.

1.

This is a matter where it is true that petitioner is the author of the four songs named on the first page of the Court of Appeals opinion Appendix A. Wrote Exhibit 11, October 26, 1939. Wrote Exhibit 26, November 17, 1939. Wrote Exhibit 25, January 28, 1940. Wrote Exhibit 12 January 28, 1942. October 9, 1940, ASCAP and Louis Bernstein acknowledged receipt of Exhibit 26 word for word as it is now. October 9, 1941, Arbie Gibson acknowledged receipt of Exhibit 11 word for word as it is now. Song Hit Guild, Inc., acknowledged receipt of Exhibits 11 and 25, April 22, 1942, the receipt is Exhibit 13. Main Street Songs, Inc., through its attorney admitted that it received Exhibit 25, word for word from your petitioner as it is now.

2.

November 14, 1941, Shapiro, Bernstein & Co., Inc., recorded in the copyright office the purported assignment

of copyright Exhibit 58. Recorded in Vol. 471 at page 193. It is invalid because it has no copyright registration number on it the Court of Appeals looked it over and the court could not find any copyright registration number on it. December through from 29 to 31, 1941, Shapiro, Bernstein & Co., Inc., made two applications for copyrights without having any author's name on the application or the certificate of copyright as shown on Exhibits 56, 57, 52, 53, claim that Paul Wierick, composer for hire, made an arrangement. The registration being Class E Publication No. 100648. There is an X marked before this certificate No. 100648 on the certified court order Exhibit 36 showing that there is no material on deposit in the copyright office for copyright registration No. 100648. The application and certificate for Class E publication No. 101174 Exhibits 57 and 53 claims Dick Howard, Bob Ellsworth and Russ Morgan to be the authors. After all this jiggling of copyrights in the copyright office for two days, claiming two publications and two rearrangements of copyrights in three days time and respondents had nothing more than what they acknowledged receipt of from your petitioner. See Appendix C. The Court of Appeals looked at the exhibits described above and was told by petitioner that they were invalid. Compare the date on the above false copyrights with the Court of Appeals' statement on the second page of its opinion saying "on and before that date the same songs had been published and copyrighted."

3.

November 4, 1942, Edwin H. Morris & Co., Inc., copyrighted Exhibit 11, claiming on the face of the song "Honey I'm In Love With You," that it is original words and music by Curt Massey and Arbie Gibson. Class E. Pub. No. 108976. Exhibit 66. I. Edward Vance, filed mail fraud

charges with the Post Office Department against Edwin H. Morris & Co., Inc., January 12, 1944. Edwin H. Morris & Co., Inc., pretended to be making a rearrangement copyright on the melody and that the rearrangement was made by Joseph P. Elsnic, employee for hire. The melody or music on this copyright is the same, compare Exhibit 11 with Exhibit 12; claim on the face of Exhibit 12 to be the 1942 copyright, the original words and music by Curt Massey and Arbie Gibson. Made no claim of rearrangement on the lyric. All of this was done in order to have a different lyric in the copyright office to avoid mail fraud prosecution. The certificate Class E. Pub. No. 119562, Exhibit 67, made no rearrangement and claim no copyright on the lyric. The Court of Appeals had these Exhibits in its hand looked at them and was told by petitioner that they were invalid. See Appendix C.

4.

Main Street Songs, Inc., claims on the song "SOMEDAY YOU'LL WANT ME TO WANT YOU" that it copyrighted it in 1940 and published it in 1940. Exhibit 61 shows that the song "SOMEDAY" was copyrighted by James S. Hodges and that Passantino Printing Co., Inc., published it. December 30, 1944, Main Street Songs, Inc., made a false claim of rearrangement copyright, claiming Jimmie Hodges came in with new matter. This false claim of rearrangement was made three years before Main Street Songs, Inc., recorded a purported assignment of copyright Exhibit 59. If the copyright is claimed before the assignment is recorded the copyright would be invalid, the assignment would be void. See Section 30, Title 17, U.S.C.A., p. 155, assignment must be recorded within three months.

5.

The Court of Appeals' opinion is like the District Courts' order, both are mere copies of defendant's false pleadings base on statement made before the two courts, without any evidence to support such false statements. Such statements are made after the purported authors and publishers refuse to offer any defense in their own behalf. The purported authors and publishers are doing business in the Western District of Missouri under the name of ASCAP and BMI, they are licensed to do business in the State of Missouri. ASCAP was served in St. Louis, its publisher members and author members were served wherever they could be found; jurisdiction of the person of defendants is set out in the record, pp. 1, 2, 14, 15, 16, 17, 18, 19, 60, 70, 71, 78. Each and all defendants are indispensable parties. They are scattered all over the United States. If any defendant does not want to appear before the Western District of Missouri and plead he can appear before the District where he is pursuant to Section 112, Title 17, U.S.C.A., as explained in *Lederer v. Rankin*, C.C. Ohio, 90 Fed. 449. Set out in 48 C.J.S., Title "Purpose of Statute, Sec. 132, note 12, Pages 245 and 246. As in U.S. l.c. *Pear & Co. v. Fox Film Corporation*, C.C.A. N.Y., 83 F.2d 196.

Numerous other cases as cited on pages 246 of 18 C.J.S., notes 13-14-15-16.

6.

The Court of Appeals has displayed a wide range of ignorance of the provisions and purpose of the copyright Act in its opinion. The reason being that the Federal Rules of Civil Procedure has rendered the Court of Appeals inefficient, my authority on that statement is 25

C.J.S. The Court of Appeals like the District Court has done nothing. The Court of Appeals stated to defendants' attorney that "Judge Smith did not say specifically what he did dismiss the complaint for." The Court of Appeals affirmed whatever the District Court said there could be, the reason being due to the Court of Appeals' bias and prejudice against the petitioner because he is a layman and for no other reason the court is trying to make a heresy out of the law. The necessary requirements of a complaint pleading under the copyright law are: State the statutes invoking the court's jurisdiction; state the issues, state acts creating the issues; state the reasons why defendant's copyrights are invalid and give the copyright registration numbers, and file the Exhibits in court and state that the plaintiff is a citizen of the United States and that his copyrights were acquired in compliance with the copyright law. See complaint R. pp. 1, 2, 3, 4, 5, 6, 7, 8.

7.

The Court of Appeals knows that petitioner's copyrights are valid; it asked to see them and the court looked at them. The Court of Appeals looked at Exhibit 58 and understood that it had no copyright registration number on it. Looked at Exhibits 11 and 12 and understood that both claim on their face, 1942 copyright contrary to Exhibit 67, a certificate of copyright, and understood that there never has been a copyright registration on the lyrics of Exhibit 12. Looked at Exhibit 25 and understood that a false claim of rearrangement copyright was registered before the purported assignment was recorded three years later.

8.

The Court of Appeals has shown by its opinion that it does not know what the requirements in a copyright com-

plaint are when pleading under the copyright law. The Court of Appeals copied the following false statements: That "this is one of eighteen various proceedings filed by plaintiff." "On and before that date the same songs had been published and copyrighted." "The original copyrights have also been expanded from time to time." Judge Sugarman did not make the statements credited to him on page 3 of Court of Appeals' opinion. The Federal Rules Decisions in the foot note on page 4 of the Court of Appeals' opinion pertains to *Vance* v. *U.S.A. et al.*, Civil No. 58-232. This claim remained open on the trial calendar 1951 until December 5, 1955; dismissed under Rule 16, Federal Rules of Civil Procedure, without cost or prejudice by Judge Knox, S.D.C., N.Y. See Exhibit 90. Your petitioner defaulted due to fraud before the court by the respondents.

Vance v. *ASCAP*, Civil No. 77235, dismissed June 18, 1954, under Rule 16 of Federal Rules of Civil Procedure, because I failed to receive proper notice from the court. See Exhibits 90 and 91.

This Court can readily see that the Court of Appeals relied upon false statements all the way through its opinion. There have been no oral arguments as to the merits of the complaint. Only two dismissals under Rule 8 F. They were not justified.

9.

Rule 10 (c) of Federal Rules of Civil Procedure states that Exhibits filed in the court are a part of the complaint for all purposes. Section 1733, Title 28, U.S.C.A., authorizes any Federal document to be used in court as evidence. Section 210, Title 17, U.S.C.A., provides that catalog entries be *prima facie* evidence. Section 209, Title 17, U.S.C.A., provides that the certificate of copyright be the

subject of litigation. *Prima facie* evidence of facts or falsity stated therein.

10.

Rule 7 (c) of Federal Rules of Civil Procedure abolishes pleading prior pleadings and pleading insufficiency of pleading. The Rules provide other ways of making discoveries. The purported authors and publishers who are joint owners of the purported copyrights have not offered any defense to their copyrights that is because I have valid copyrights and I have standing open complaints with the Post Office Department who advises me that the statute of limitation was tolled when I first filed my complaint in 1942.

When I first brought suit for two of the songs in 1944, the Post Office Department makes this statement because it does not have jurisdiction over copyright. Respondents claimed valid copyrights to the Post Office Department but never have offered any defense or made any plea to valid copyrights in court. I have standing open complaints with the Federal Trade Commission's Bureau of Legal Investigation, 5382, *Vance* v. *ASCAP et al.* Mr. Barns, head of the Monopoly Division of the Department of Justice, made an investigation of my case in Kansas City, for one week and notified me that he understood that I had a motion before the U.S.D. Court in St. Louis, to have the copyrights declared invalid. Then he would decide what he would do. Judge Harper said he did not know much about copyrights, he thought they just pirate your songs and copyright them. Dismissed on the grounds that my case stems from common law piracy. That was case, *Vance* v. *ASCAP et al.*, D.C.E.D. Mo., No. 10261 (3).

The Department of Justice maintains four files on my case, Criminal, Civil Fraud, Copyright and Monopoly Divi-

sion. The District attorney has no jurisdiction over copyrights.

11.

The Federal Bureau of Investigation made a report to the Attorney General and the F.B.I. said that they understood that each time the copyrights were used the violations were renewed but they have no jurisdiction over copyrights. The legal staff of Congress Judiciary Committee made an investigation by asking the attorney at the Copyright office if new material could be filed back under old copyright registration numbers as I alleged and he was advised that it could be done and the attorney at the copyright office explained how it could be done. The lawyer representing the legal staff of the judiciary committee said he could not present my complaint on the floor of Congress at that time because I had a case pending in the Federal Court in St. Louis at that time. However he said if and after I had run my course in the courts, come back to him and he would present my complaint of the law to Congress and argue it on the floor of the HOUSE. The United States commissioners in New York City and Kansas City, both refused to let me make a sworn statement before them on the grounds that they do not know anything about copyrights. March 15, 1958, I, Edward Vance, made a sworn statement before the chief clerk of the United States District Court, titled *United States* v. *ASCAP et al*...under Section 1001, Title 18, U.S.C.A., and mailed it to the Attorney General of the United States. The disposition of the Certificate of unconstitutionality signed by Judge Knox, December 2, 1952, is shown on page 66 of the record, and page 70. Annexed hereto is Appendix E, a copy of letter from James Roosevelt, chairman of Subcommittee No. 5, of Select Committee on Small

Business of the House of Representatives of The United States, dated August 10, 1959. This committee has made a report about the activities of ASCAP and has remained a watchdog over the Department of Justice for more than one year and has caused the New York Court to be opened under the Consent Decree, *U. S.* v. *ASCAP*, Civil No. 1395.

REASONS RELIED UPON FOR THE GRANTING OF A WRIT OF CERTIORARI.

12.

Petitioner was dispossessed of his property without due process of law. Petitioner is being denied equal protection of law as provided for by Sec. 1 of the 14th Amendment of the Constitution of the United States.

13.

Section 3, Title 17, U.S.C.A., is repugnant to the Constitution of the United States. Respondents, the purported authors and publishers, through concert action, used Section 3, Title 17, U.S.C.A., to claim ancient copyright on my four songs as shown on the copyright records, Exhibits 11, 12, 25, 26, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 62, 63, 64, 65, 66, 67, 83, 84, 85, 86, 87, 88, 89, R. p. 2. Respondents used six decoy authors; used rearrangement application blanks with my entirely new four songs; made four false claims of protection on component parts, making false claims that copyright subsisted on some parts of my four songs; enlarged the scope of copyright, in violation of Section 3, used old copyright registration numbers and filed my entirely new four songs back under those old copyright registration numbers they had used other entirely different songs with and different titles until the old entirely different songs became inactive in their reper-

toire of music and of no more use to them. Violating 37 C.F.R. Violating Sections 1, 2, 3, 101, 105 and 112 of Title 17, U.S.C.A., continuous making false claims of valid copyrights to collect money under false pretense. Respondents have pooled my songs under two industry wide blanket licenses promoted and maintained by ASCAP and BMI, two major licensing national agencies, operating under blanket licenses industry wide, paying each member on their classification of membership, making it impossible for an accounting as provided by the copyright law. See Material on deposit in the copyright office, Exhibits 83, 84, 85, 86, 87, 88.

14.

Publishers members of ASCAP and BMI are incorporated under state laws but do not operate as entities with any capacity under any state law. Instead each publisher member has elected to operate collectively through ASCAP or BMI under color of the copyright law of the United States as a classified member of ASCAP or BMI doing business in the State of Missouri in the same manner these corporations do business in the state of their incorporation.

15.

Section 1, Title 17, U.S.C.A., provides exclusive rights to any person entitled thereto, upon complying with the provisions of this title. They can do all the things a valid copyright provides for. Failure to comply with the provisions of this title is fatal.

All rights are forfeited under Section 1, anytime within 28 years. A suit brought under Section 1 is not a common law claim. It is a Federal question. No State court can rule on illegal procurement of copyright. It makes no difference whether the party maintaining the suit has

copyright on the same material or not; or it makes no difference whether defendants pirated the songs or how they acquired the material. In this instance it was through illegal use of the mails. Nevertheless the gravamen of my complaint is invalid copyrights. See Paragraphs 4, 5, 6 of complaint, R. pp. 2, 3, 4.

A copyright is an exclusive right, the purported authors, publishers and owners were not entitled to copyright and they did not secure any rights and they have no right to continue to do without copyright what a valid copyright provides for. All the respondents named in the caption of this petition are liable, their acts co-ordinate so that they represent each other all over the United States.

16.

The respondents are not entitled to copyrights and they are working a continuous fraud against the United States and the statutes of limitations do not apply. Section 112, Title 17, U.S.C.A., provides injunctions, service and enforcement, anywhere in the United States, where the invalid copyrights are being used to do what a valid copyright provides for, upon complaint filed by any party aggrieved.

Section 115 of Title 17, U.S.C.A., pertains to rights secured under this title. Section 101 provides injunctions against infringement. If one who has a valid copyright waits three years before bringing suit for infringement against that copyright then Sec. 115 would apply. The violation is renewed and a new cause accrues each and every time anyone who is not entitled to copyright uses an invalid copyright to do what a valid copyright provides for. Only a person entitled to copyright can do what respondents are charged with in Paragraphs 4, 5, 6 of complaint, R. pp. 2, 3, 4.

17.

Section 2, Title 17, U.S.C.A., authorizes suit under my unpublished copyright. Section 3, Title 17, U.S.C.A., provides protection on component parts. Which reads in part: "The Copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this title."

Through abuse of this paragraph in Section 3, respondents used Section 3 as an instrumentality to claim 1937, 1940, 1942 copyrights on four songs that were not in existence until I composed them and respondents do not deny that they received the songs from me. Such overt acts renders Sec. 2, Title 17, U.S.C.A., null, renders petitioner's common law literary property right inadequate. The purported authors and publishers have admitted all facts to be true and well pleaded by pleading under Rule 12 (b) (6) of Federal Rules of Civil Procedure; that only a question of law remains before the court to decide.

18.

The attorney representing the third party defendants who has been retained by ASCAP for twenty years refers to copyright registrations as being piracy claims under common law. See R. p. 22.

The third party defendants knowing I have an equity interest in the copyrights wrongfully taken out by the purported authors and publishers plead innocence of infringement but plead for the purported authors and publishers by saying the copyrights were duly registered and the judgment of both courts are based on the third party's pleading which is not based on any known fact.

19.

Section 105 of Title 17, U.S.C.A., bars all false markings on songs and copyrights and all claims on the four songs, all five applications and certificates of copyrights made by respondents after they acknowledged receipt of my four songs are false. The copyright registrations listed in paragraph No. 4 of complaint, R. p. 3, must be declared invalid.

Your petitioner respectfully prays for a writ of certiorari.

Respectfully submitted,

Edward Vance

EDWARD VANCE,

Petitioner.